

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF)
BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33)
INC., OWNERS OF THE M/V LEGACY, FOR) Case No. 19-CV-184-RAW
EXONERATION FROM OR LIMITATION OF,)
LIABILITY.)

**ANSWER OF CONSOLIDATED GRAIN AND BARGE CO.
AND CGB ENTERPRISES, INC., TO THE COMPLAINT**

COMES NOW Consolidated Grain and Barge Co. and CGB Enterprises, Inc. (hereinafter collectively "CGB"), by and through their attorneys, Fox Galvin, LLC and Crowe & Dunlevy, and for their Answer to the Complaint of Bruce Oakley, Inc. and Johnston's Port 33 Inc. (hereinafter "Petitioners") state:

1. CGB admits that this matter involves admiralty and maritime claims within the provisions of Federal Rule of Civil Procedure 9(h) and within the admiralty and maritime jurisdiction of this Court pursuant to 28 U.S.C. §§1331 and 1333. CGB denies the remaining allegations of paragraph 1 of the limitation complaint and specifically denies that Rule F of the Supplemental Rules of Admiralty Or Maritime Claims govern this matter as CGB denies that Petitioners have any right or basis to support exoneration from and/or limitation of liability under 46 U.S.C. §30501 *et seq.* and/or Supplemental Rule for Admiralty F and/or other statutes, rules, regulations, or laws related thereto.

2. In that CGB lacks sufficient information upon which to base a belief as to the truth or validity of the allegations contained in paragraph 2, CGB denies all said allegations.

3. In that CGB lacks sufficient information upon which to base a belief as to the truth or validity of the allegations contained in paragraph 3, CGB denies all said allegations.

4. In that CGB lacks sufficient information upon which to base a belief as to the truth or validity of the allegations contained in paragraph 4, CGB denies all said allegations.

5. In that CGB lacks sufficient information upon which to base a belief as to the truth or validity of the allegations contained in paragraph 5, CGB denies all said allegations.

6-17. CGB admits that it was the owner of the fertilizer cargo in barges LTD 11140 and MTC 7256 and that said barges and cargo were delivered to the exclusive care, custody, and control of Petitioners to be managed with reasonable care and in a safe and secure manner by the *M/V Legacy* and perhaps other inland river towboats and their vessel crew operated by Petitioners and to provide said barges with a safe berth. For these reasons and because Petitioners provided no notice to CGB as to the status, movement, security, or endangerment of said barges and their cargo, CGB has no information upon which to base a belief as to the truth and validity of the allegations set forth in Petitioners' complaint paragraphs 6 through 17 and therefore denies same and demands strict proof thereof.

18. CGB admits that barges LTD 11140 and MTC 7256 laden with fertilizer cargo owned by CGB landed on the upriver side of the Webber Falls Lock and Dam on the Arkansas River and sank on or about May 23, 2019, resulting in a total loss of the cargo in both barges. Except as expressly admitted herein, CGB denies each and every allegation contained in paragraph 18.

19. In that the allegations contained in paragraph 19 are not directed towards CGB, it makes no answer, response, or reply to paragraph 19. However, should any of the allegations contained therein be deemed relevant to the answer and claims of CGB, CGB denies same.

20. In that the allegations contained in paragraph 20 are not directed towards CGB, it makes no answer, response, or reply to paragraph 20. However, should any of the allegations contained therein be deemed relevant to the answer and claims of CGB, CGB denies same.

21. In that the allegations contained in paragraph 21 are not directed towards CGB, it makes no answer, response, or reply to paragraph 21. However, should any of the allegations contained therein be deemed relevant to the answer and claims of CGB, CGB denies same.

22. CGB admits the allegations contained in paragraph 22, except to state that the cargo was owned by Consolidated Grain and Barge Co., which is a wholly owed subsidiary of CGB Enterprises, Inc.

23. CGB denies each and every allegation contained in paragraph 23.

24. CGB denies each and every allegation contained in paragraph 24.

25. CGB denies each and every allegation contained in paragraph 25.

26. CGB denies each and every allegation contained in paragraph 26 specifically for the reason that Petitioners' *Ad Interim* Stipulation for Value signed by Tim Cummins, CFO of Bruce Oakley, Inc., and supported by the Affidavit of Wade McGrady, professional marine surveyor, appraised the value of the *M/V Legacy* at \$2,107,000.00 as of May 23, 2019. Without admitting that this amount is the proper value of the *M/V Legacy*, Petitioners' own appraisal exceeds the value Petitioners' allege.

27. CGB denies each and every allegation contained in paragraph 27 specifically for the reason that Petitioners' *Ad Interim* Stipulation for Value signed by Tim Cummins, CFO of Bruce Oakley, Inc., and supported by the Affidavit of Wade McGrady, professional marine surveyor, appraised the value of the *M/V Legacy* at \$2,107,000.00 as of May 23, 2019. Without

admitting that this amount is the proper value of the *M/V Legacy*, Petitioners' own appraisal exceeds the value Petitioners' allege.

28. CGB denies each and every allegation contained in paragraph 28.

29. CGB denies that Petitioners are entitled to the benefit of the Limitation of Vessel Owners' Liability Act under Title 46, U.S.C. §§30501-30512, and all other allegations contained in paragraph 29.

30. CGB denies each and every allegation contained in paragraph 30.

31. CGB denies each and every allegation contained in paragraph 31.

In response to Petitioners' wherefore paragraph and all subparts thereof, CGB avers on information and belief that the total loss of barges LTD 11140 and MTC 7256 and CGB's fertilizer laden therein was caused directly and proximately by the sole negligence, breach of bailment, and/or negligence per se of Petitioners and their owners, principles, servants, and/or employees, and/or negligence, breach of bailment, or negligence per se of the master, crew and/or operators of the *M/V Legacy* and/or perhaps other vessels under the control of Petitioners operating in the subject area of the Arkansas River and charged with responsibility for tending to the barges and cargos contained therein as well as the unseaworthiness of said vessels. Further, all and separately of the above liabilities were within the privity and knowledge of Petitioners and its or their supervising, managerial personnel, and owners and/or operators thus barring any right to exoneration from or limitation of liability in favor of Petitioners pursuant to Rule F or 36 U.S.C. §§30501 *et seq.* Accordingly, CGB avers that it is entitled to recover the full value of its lost cargo equaling \$1,083,869.50 plus interest beginning on the date of loss until the date of judgment.

AFFIRMATIVE DEFENSES

1. For further answer and by way of affirmative defense, CGB claims that the limitation complaint fails to state a claim upon which relief can be granted.
2. The limitation fund and/or *Ad Interim* Stipulation posted by Petitioners is inadequate, and the limitation complaint should be dismissed for failure to post a proper letter of undertaking by failing to submit the undertaking party to the jurisdiction of this Court and/or security equal to the fair market value of the *M/V Legacy* and/or other vessels that may have been operating in or around the subject area of the Arkansas River by Petitioners and charged with responsibility for the aforesaid barges and the value of which additional vessel should be added to the limitations fund.
3. CGB denies the *M/V Legacy* has been properly valued and asserts its right to an independent appraisal of all motor vessels operated by Petitioners in and around the subject area.
4. The loss of CGB's cargo was caused directly and proximately by the sole negligence, breach of bailment, and/or negligence per se and/or statutory/regulatory/policy violations and presumptions imposed thereby of Petitioners and their principles, charterers, agents, servants, and/or employees including the master, crew, and operators of the *M/V Legacy* and/or unseaworthiness of the *MV Legacy* or other motor vessels of Petitioners. All acts or omissions herein were the sole and proximate cause of the loss of CGB's cargo and were within the privity and knowledge of Petitioners who are not entitled to exoneration from or limitation of liability.
5. To the extent it may be found that Petitioners are not the sole proximate cause of CGB's cargo loss and damages, CGB then and in the alternative alleges that Petitioners' fault as set forth herein and in CGB's claim contributed to said loss and damages and thereby CGB

requests that a percentage be assigned to the Petitioners' degree of fault and be assessed against Petitioners, and said fault is within the privity and knowledge of Petitioners and therefore not subject to limitation.

6. That the negligence, negligence per se, breach of bailment, and/or statutory/regulatory/policy violations and/or unseaworthiness of Petitioners' vessels, including the *M/V Legacy*, were the superseding cause of CGB's damages and were within the privity and knowledge of Petitioners.

7. CGB states that it may have additional defenses to Petitioners' complaint which may be revealed through discovery and, accordingly, CGB reserves the right to assert additional defenses as needed and appropriate.

WHEREFORE, CGB prays that the Complaint herein for exoneration from and/or limitation of liability be denied and that, pursuant to CGB's claim filed with this Answer, the Court award CGB its damages with interest thereon and cost of these proceedings and the Court grant such other and further relief deemed just and proper in the circumstances.

Respectfully submitted,

/s/ Deric McClellan
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**Attorneys for Consolidated Grain and Barge Co.
and CGB Enterprises, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2019, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. Based on the records currently on file, the Court Clerk will transmit a Notice of Electronic Filing to the following ECF registrants:

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/s/Deric McClellan